IN THE HIGH COURT FOR THE STATE OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP NO.7608 OF 2006
DATE OF DECISION:26.9.2006

DR. HARI OM AND OTHERS

...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.
HON'BLE MR. JUSTICE M.M.S. BEDI.

Present: Mr. Subhash Ahuja, Advocate
for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana
for the respondents.

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M.M. KUMAR, J. (Oral)

The prayer made by the petitioners in the instant petition is for quashing order dated 5.5.2006 (P-10), rejecting the candidature of the petitioners for appointment to the post of Dental Surgeon (Group-B). The facts are not in dispute that the advertisement for the post of Dental Surgeon (Group B) was issued on 27.11.2005 and the last date for submitting the applications was 20.12.2005. The petitioners have not completed their internship on account of late declaration of result on 18.2.2006. They made a representation to the State Government for granting concession so as to enable them to compete for the post of Dental Surgeon (Group B) for which the selection process has been initiated in pursuance to advertisement dated 27.11.2005**.** The Government vide its decision dated 28.4.2006 (P-9) accepted their representation and the worthy Chief Minister had ordered that those candidates who would produce their completion certificate of internship at the time of interview were also to be considered

as eligible candidates. The petitioners have also appeared in written test held on 16.4.2006. When the instant petition was filed, the selection process by holding the interview was in progress. Accordingly, vide interim order dated 19.5.2006, we allowed all the petitioners to appear for interview. In pursuant to the interim direction, four petitioners have been interviewed and the matter came up for consideration on 12.9.2006. We have recorded the following order after perusing the sealed cover:

> *" A sealed cover has been opened and it has been found that the last candidate selected in the category of S.C. `B' has secured 249 marks by adding the marks of written test and has been allowed viva voce. In the category of B.C. the last candidate has secured 261 marks. As the things stand today only Dr. Hari Om belongs to S.C. `B' category and he has to be heard on merits to find out whether the petitioners are eligible for appointment as Dental Surgeon. Accordingly, the Bench Secretary who had opened the sealed cover shall reseal the same and hand over to the learned State counsel. However, one copy of the written marks obtained by the petitioners is placed on record as Mark `A'.*
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> *List for arguments on 26.09.2006."*

According to the sealed cover only Dr. Hari Om, who belongs to SC 'B' category has secured more marks then the last candidate. It is appropriate to mention that the last candidate has secured 249 marks by adding the marks of written test and viva-voce, whereas Dr. Hari Om, who belongs to the same category has secured 252 marks (230 in the written test and 22 in the viva-voce) as stated by the learned State counsel.

In the written statement filed by respondent Nos. 3 and 4, the stand taken is that the candidate was required to fulfil the eligibility criteria on the last date of receipt of the application, which was

31.12.2005. Therefore, it has been asserted that the petitioners, who have not qualified on the last date of application were not eligible to be considered for appointment to the post of Dental Surgeon (Group B). It is further pointed out that after the receipt of decision of the Government dated 28.4.2006 (P-9), the Commission has intimated to it on 4.5.2006 that the application forms of all the candidates were scrutinized and the recruitment process for the post of Dental Surgeon (Group B) had commenced. It is pointed that if the candidates, who have completed their internship on February 18, 2006 could be considered because it would go against the terms of the advertisement and similarly situated candidates may raise the grievance that they have not applied on account of non-completion of their internship on or before 31.12.2005, as per requirement of the advertisement. The judgment of Hon'ble the Supreme Court in the case of **Ashok Kumar and others v. Chander Shekhar and anr.** 1997 (3)RSJ 26 and **Yogesh Kumar and others v. Government of N.T.C. Delhi and others** 2003(2) RSJ 707, have been cited in support of the above view. Therefore, it has been submitted that the petitioners do not fulfil the prescribed qualification on the cut off date i.e. 31.12.2005. However, there is no further reference to any communication sent by the Government, which would imply that the decision of the Government taken on 28.4.2006 (P-9) continue to govern the issue.

After hearing the learned counsel for the parties and perusing the records, we are of the considered view that employer is at liberty to provide qualification or a cut off date for the purposes of eligibility. In the instant case on account of peculiar facts of late declaration of result, the internship could not be completed by Dental Surgeon Graduates by the cut

off date. Accordingly, the Government came to their rescue by passing order dated 28.4.2006 (P-9) was passed. In our view respondent No.3 which is a recruiting agency has no locus standi to question the decision of the Government. We also find that it was the Commission itself, which has permitted the petitioners to take the written examination and only at the stage of interview the plea concerning their eligibility has been raised and the impugned order was passed on 5.5.2006 (P-10). The order dated 5.5.2006 (P-10) does not make any reference to the Government order dated 28.4.2006, which is specifically addressed to respondent Nos. 3 and 4. There is no material on record showing that the order passed at the instance of worthy Chief Minister dated 28.4.2006 has either been altered or withdrawn till date.

In view of above, this petition is partly allowed. Accordingly, we direct respondent Nos. 3 and 4 to recommend the name of Dr. Hari Om-petitioner No.1 to respondent Nos.1 and 2, as we find that he has fulfilled the eligibility in view of the Government order dated 28.4.2006. On such recommendation made by respondent Nos. 3 and 4, petitioner No.1 shall be issued appointment letter, by considering his case on merit. The case of other petitioners do not deserve for any further consideration as they have not qualified for the interview as per criteria prescribed by the Commission and the petition qua them is, accordingly, dismissed.

(M.M.Kumar)
Judge

September 26, 2006
gsv

(M.M.S. Bedi)
Judge